No. 93-2037

AUG 1 8 1994

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

ALFREDO A., a Juvenile,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

RESPONDENT'S BRIEF IN OPPOSITION

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CONTENTS REPRODUCED FROM FURNISHED PRETYPED COPY.

TABLE OF CONTENTS

Page

Table of Cases and Authorities ii

Argument

1. **Contrary to the inference in the Petition, juvenile detainees in California must receive a judicial determination of probable cause not later than 72 hours following arrest** . . 1

2. **The California Supreme Court decision is consistent with and not in conflict with applicable decisions of the United States Supreme Court** 2

Conclusion 9

Table of Cases and Authorities

Cases Cited

Alfredo A. v. Superior Court (1994)
6 Cal.4th 1215; Petition, page A-25 . . . . . 2, 7
County of Riverside v. McLaughlin (1991)
500 U.S. 44, 114 L.Ed.2d 49,
111 S.Ct. 1661 3
Gerstein v. Pugh (1975)
420 U.S. 103, 43 L.Ed.2d 54,
95 S.Ct. 854 . . . . . 2, 3, 8
Reno v. Flores (1993)
507 U.S at ___, 123 L.Ed.2d 1,
113 S.Ct. 1439 . . . . . 4, 8
Schall v. Martin (1984)
467 U.S. 253, 81 L.Ed.2d 207,
104 S.Ct. 2403 . . . . . 3, 4, 8

Statutes Cited

California Welfare and Institutions Code
section 207.1 6
section 602 5
section 626 . . . . . 5, 8
section 627 7
section 628 . . . . . 7, 8
section 631 7
section 632 7
section 851 . . . . . 6, 8

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RESPONDENT'S BRIEF IN OPPOSITION

Argument

1. Contrary to the inference in the Petition, juvenile detainees in California must receive a judicial determination of probable cause not later than 72 hours following arrest.

California's juvenile detention statutes, as construed by the California Supreme Court in the present case, mandate that juvenile detainees arrested without a warrant receive a judicial determination of probable cause not later than 72 hours following arrest. The judicial determination of probable cause will be accomplished within 72 hours following arrest by either (1) a full adversarial detention hearing, or, (2), if that hearing cannot be accomplished within that time, by a judicial determination of probable cause within 72 hours following arrest.

Contrary to the inference in the Petition, California's juvenile detention statutes, as construed by the California Supreme Court in the present case, do not allow a judicial determination of probable cause to be delayed longer than 72 hours under any circumstances.

In the first paragraph of his Statement of the Case, Petitioner states: "The arraignment may be delayed on weekends and holidays, and may thus occur as long as seven days after the juvenile's arrest."

The "arraignment," which is a full adversarial detention hearing which includes a probable cause determination, may be so delayed. However, the California Supreme Court has mandated that "if the 72-hour period immediately following arrest includes one or

more 'nonjudicial days,' such that the juvenile court is unable or unwilling to provide a full statutory detention hearing within that period, then the Constitution independently requires that the juvenile be afforded a separate, timely judicial determination of probable cause for any extended period of detention beyond the 72 hours following arrest." (***Alfredo A. v. Superior Court*** (1994) 6 Cal.4th 1215, 1232; Petition, page A-25)

2. The California Supreme Court decision is consistent with and not in conflict with applicable decisions of the United States Supreme Court.

The issue in this case is whether fundamental differences between adult and juvenile proceedings in California, including the different and more demanding procedural protection afforded juveniles, and the more complex post-arrest tasks and determinations that must be accomplished following arrest, justifies a conclusion that judicial determinations of probable cause within 72 hours of a juvenile's arrest complies with constitutional requirements, even though this Court has held that such a determination for adult detainees must generally be accomplished within 48 hours of arrest.

In ***Gerstein v. Pugh*** (1975) 420 U.S. 103, 43 L.Ed.2d 54, 95 S.Ct. 854, this Court held that a prompt judicial determination of probable cause is a prerequisite to an extended pretrial detention following a warrantless arrest. This Court did not mandate a specific timetable for the probable cause determination, recognizing "the desirability of flexibility and experimentation by the states." (420 U.S. at 123).

In *County of Riverside v. McLaughlin* (1991) 500 U.S. 44, 114 L.Ed.2d 49, 111 S.Ct. 1661, this Court concluded with regard to adults "that a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*. In reaching this conclusion, this Court balanced the state's public safety interest in immediate pretrial detention against the arrestee's interests in avoiding prolonged detention based on incorrect suspicion. (111 S.Ct. at 1668).

Neither *Gerstein* nor *McLaughlin* were juvenile detention cases, nor did either case balance the fundamentally different competing interests related to juvenile detention.

However, the intervening decision in *Schall v. Martin* (1984) 467 U.S. 253, 81 L.Ed.2d 207, 104 S.Ct. 2403, indicated that Fourth Amendment and related due process claims pertaining to the pretrial detention of juveniles following warrantless arrests for criminal activity cannot be viewed in the same light as similar challenges to adult detention, because juvenile proceedings are fundamentally different from adult criminal proceedings, requiring that a balance be struck between the informality and flexibility that characterize juvenile proceedings with the fundamental fairness demanded by the Due Process Clause. (*Schall, supra*, 467 U.S. at 263).

More recently, this Court has reaffirmed that the state's *parens patriae* interest in preserving and promoting the welfare of the child renders juvenile proceedings fundamentally different from adult criminal proceedings, and once again emphasized that "'juveniles,

unlike adults, are always in some form of custody,' ***Schall, supra***, [467 U.S.] at 265, and that where the custody of the parent or legal guardian fails, the government may (indeed, we have said *must*) either exercise custody itself or appoint someone else to do so. *Ibid.*" (***Reno v. Flores*** (1993) 507 U.S at ___, 123 L.Ed.2d 1, 17, 113 S.Ct. 1439; italics in original.)

Not only are there fundamental differences in purpose and procedure between the treatment of adult and juvenile detainees in California, but also the California Juvenile Court Law prescribes different, and more demanding procedures designed to ensure that an arrested juvenile will be released in accordance with well-established and codified policies at the earliest possible time following arrest, preferably to the custody of a parent or legal guardian. Although judicial determination of probable cause for juvenile detention may be delayed up to 24 hours longer than for adults, greater and more demanding non-judicial determinations of probable cause and the different needs for detention prior to that judicial review not only justify the additional time but are more likely to result in early release from detention than a judicial review of probable cause.

When a minor is arrested and detained on suspicion of having committed a crime, the minor is not formally charged with the crime in the sense that adult arrestees are criminally prosecuted. Rather, a determination is made whether to commence wardship proceedings with the filing of a petition by the prosecuting attorney pursuant to California Welfare &

Institutions Code section 602.[1]
(§ 650, subd. (c))

Various official functions must be performed at the time of the juvenile's arrest, and within the initial 72 hour period following the arrest--all designed to ensure that the detained minor is afforded every reasonable opportunity for release, preferably to a parent or guardian.

By statute, juvenile detention is to be avoided if possible, and if imposed, is fundamentally different than adult detention. The underlying policy is set forth in section 626, subdivision (d):

> "In determining which disposition of the minor to made, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided that alternative is compatible with the best interests of the minor."

Pursuant to that policy, the arresting officer may release the minor outright (§626, subd.(a)), deliver the minor to a public or private shelter facility (*id.*, subd. (b)), or release the minor on a written promise to appear before a county juvenile probation officer, or to a parent, guardian, or other responsible relative. (*Id.*, subd. (c)).

Accordingly, the juvenile procedures, which prefer release if possible even if there is probable cause, are more likely to result in early release that judicial

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[1]Unless otherwise indicated, all statutory references are to the California Welfare & Institutions Code.

probable cause determinations which permit extended detention any time probable cause is established.

Not only are the juvenile's liberty interests different than those of adults, but the circumstances permitting detention and the procedures afforded juveniles detained prior to judicial review of probable cause provide far greater protection against erroneous and unnecessary deprivations of liberty than is afforded to adults.

Only juveniles over the age of 14 years who present a serious security risk of harm to self or others may be securely detained in a law enforcement facility that contains a jail or lockup, and then for not longer than 6 hours, and only for temporary custody for the purpose of investigating the case, facilitating release or arranging transfer to an appropriate juvenile facility, unless the juvenile has been certified to be tried as an adult. (§207.1)

When secure detention in a juvenile hall is required, state law mandates that "[t]he juvenile hall shall not be in, or connected with any jail or prison and shall not be deemed to be nor be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible."
(§ 851)

If the arresting officer elects to deliver the minor to the juvenile probation officer for secure detention, the arresting officer is required to prepare a concise written statement of the probable cause for taking the minor into temporary custody, to be furnished along with the custody of the minor to the probation officer within 24

hours of the arrest (*Id.*, subd. (d)), and to "take immediate steps to notify the minor's parent, guardian, or responsible relative that such minor is in custody and the place where he is being held." (§627, subd. (a))

The juvenile probation officer is then required to "immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody," and to "immediately release the minor to the custody of his parent, guardian, or responsible relative unless one or more ...[specified conditions] exist..." (§ 628)

If the probation officer does not find any of the conditions warranting detention specified in section 628 to exist, he must release the minor from custody. If one of the conditions is found to exist and the probation officer believes further detention is required he must within 48 hours of the time the minor was first taken into custody, file with the juvenile court a petition to declare the minor a ward of the court. If such a petition is not timely filed within 48 hours of the juvenile first being taken into custody, the juvenile must be released from custody (§ 631).

As construed by the California Supreme Court in the present case, the minor must be afforded a formal, adversarial "detention hearing" in juvenile court "as soon as possible but in any event" not later than the expiration 72 hours following arrest, unless a judicial review of probable cause has been sooner accomplished. (§ 632, subd. (a), as construed in ***Alfredo A. v. Superior Court***, *supra*, 6 Cal.4th at 1232.

As is evident from this summary, the determination whether to detain a minor following a warrantless arrest for criminal activity is a complex one, requiring consideration of various factors personal to the minor and his family situation (§628), and the application of several important statutory presumptions favoring the minor's early release, or, if extended detention is warranted, selection of the detention alternative most "compatible with the best interests of the minor ...," and "which least restricts the minor's freedom of movement" (§ 626). The place of detention is to be as "homelike" as possible. (§ 851)

Consistent with this Court's decisions in ***Schall*** and ***Flores***, the California Supreme Court balanced the fundamentally different interests affecting juvenile as opposed to adult detention, and appropriately concluded that a judicial determination of probable cause made not later than 72 hours following arrest will comply with the promptness requirement of ***Gerstein***.

Conclusion

The Petition for Certiorari should be denied.

Respectfully submitted,

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